

**Internal Revenue Service
memorandum**

CC:W:DEN:TL-N-5428-97

MSHeroux

date: **13 MAY 1999**

to: Case Manager E:2 4214DEN

from: District Counsel, Rocky Mountain District CC:WR:RMD:DEN

subject: [REDACTED], and Subsidiaries
Extension of Assessment Statute

DISCLOSURE LIMITATIONS

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Your office has requested advice regarding who should sign statute extensions in the above-referenced case.

ISSUE

[REDACTED], was purchased by [REDACTED]
[REDACTED], which changed [REDACTED]'s name to [REDACTED]
[REDACTED]. Who should sign a consent to extend the statute of limitations for [REDACTED]?

CONCLUSION

The consent should be signed by an officer of [REDACTED] who has authority to extend the assessment statute.

FACTS

On [REDACTED], [REDACTED] was acquired as a fully owned subsidiary of [REDACTED] and its name was changed to [REDACTED] and retained and used [REDACTED]'s EIN. [REDACTED] filed its [REDACTED] tax return, and the tax return for the tax period from [REDACTED] to [REDACTED] under its name. For the tax period from [REDACTED] to [REDACTED] the tax attributes of [REDACTED] now known as [REDACTED] were reported on [REDACTED]'s consolidated return.

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For the [REDACTED] tax year, [REDACTED]'s tax attributes were reported on [REDACTED]'s consolidated return. On [REDACTED], [REDACTED] was formed and [REDACTED]'s stock was contributed to [REDACTED]. [REDACTED] filed a short-year return for the tax period from [REDACTED] to [REDACTED], reporting [REDACTED]'s tax attributes on its consolidated return. For the period from [REDACTED] through [REDACTED], the tax attributes of [REDACTED] are reported on [REDACTED]'s consolidated returns. On [REDACTED], [REDACTED] is merged downward into [REDACTED].

The Examination Team's audit includes [REDACTED]'s [REDACTED] tax year and its tax period ended [REDACTED]. Prior consents for [REDACTED] identify the taxpayer as [REDACTED], formerly known as [REDACTED]" and are signed by a duly authorized officer of [REDACTED]. [REDACTED]'s [REDACTED] assessment period has been extended to [REDACTED]. Its short-year [REDACTED] assessment period expires [REDACTED]. All entities are C corporations.

LEGAL ANALYSIS

Internal Revenue Code § 6501 provides for limitations on assessment. Generally, assessment shall be made within three years from the date the return is filed. Under § 6501(c)(4), the statute may be extended by agreement. In the corporate context, particularly where the taxpayer subject to audit is subsequently acquired by another taxpayer, the authority of a corporate officer to bind the audit taxpayer becomes an issue.

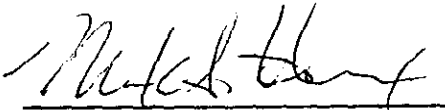
The power to sign waivers does not have to be expressly conferred on a corporate officer where the power of consent is within his ordinary corporate functions. Liberty Baking Co. v. Hiener, 34 F.2d 513 (W.D. Pa. 1929). Further, it is well settled that a corporate officer with authority to file returns and act for the corporation in tax matters can bind it by executing a waiver. Independent Ice & Cold Storage Co. v. Commissioner, 50 F.2d 31 (5th Cir. 1931); Weatherford, Crump & Co. v. Bass, 63 F.2d 465 (5th Cir. 1933), cert. den., 290 U.S. 648 (1933); L.J. Christopher Co. Of Delaware v. Commissioner, 55 F.2d 530 (D.C. Cir. 1931); Continental Oil Co. v. United States, 14 F. Supp. 533 (Ct. Cl. 1936). An acquiring corporation has the authority to execute waivers of limitation on assessment against the acquired corporation. See Pleasanton Gravel Co. v. Commissioner, 85 T.C. 839 (1985); Popular Library, Inc. v. Commissioner, 39 T.C. 1092 (1963); Oswego Falls Corporation v. Commissioner, 71 F.2d 673 (2d Cir. 1934); Phillips v. Lyman H. Howe Films Co., 33 F.2d 891 (3d Cir. 1929); See also Rev. Rul. 59-399, 1959-2 C.B. 488.

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Based on the information provided by Exam, a duly authorized officer of ██████████ can effectively extend the assessment statute governing ██████████'s ██████████ tax period and the ██████████ tax period ending ██████████. On ██████████ ██████████ was purchased by ██████████ and had its name changed to ██████████ while retaining ██████████'s EIN. ██████████ is therefore the successor corporation to ██████████. As stated in Independent Ice & Cold Storage Co., a corporate officer with authority to act for the corporation in tax matters can bind it by executing a waiver. We believe that it is the taxpayer's intent to extend the statutes here. Having a duly authorized officer of ██████████ sign the consent would limit any contrary argument. R.H. Stearns Co. v. United States, 291 U.S. 54 (1934); Philip Carey Mfg. Co. v. Dean, 43 F.2d 369 (S.D. Ohio, W.D. 1930), cert. den., 287 U.S. 623 (1932). We recommend that the consent show the taxpayer's name as "██████████ ██████████ and Subsidiaries, formerly known as ██████████ ██████████."

If you have any questions regarding this memorandum, please contact me at 844-2214 ext. 225.

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By: 
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